

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

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Harold Lee Smith, #09595-058,)
)
Petitioner,)
)
v.)
)
Federal Bureau of Prisons; United States;)
Kenny Atkinson;)
)
Respondents.)
_____)

2013 JUL 23 A 11: 57
C/A No. 9:13-384-RMG

ORDER

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Magistrate Judge recommending that this Court dismiss Petitioner’s petition filed pursuant to 28 U.S.C. § 2241. (Dkt. No. 31). For the reasons set forth below, the Court agrees with and adopts the R&R as the order of the Court.

Background

Petitioner, a federal inmate at FCI-Edgefield, filed this petition for relief pursuant to 28 U.S.C. § 2241. (Dkt. No. 1). This case was then automatically referred to a United States Magistrate Judge for all pretrial proceedings pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2)(c) DSC. Under established local procedure in this judicial district, the Magistrate Judge then conducted a careful review of this *pro se* petition pursuant to 28 U.S.C. § 1915, 28 U.S.C. § 1915A, the Anti-Terrorism and Effective Death Penalty Act of 1996, other habeas corpus statutes, and in light of the following precedents: *Denton v. Hernandez*, 504 U.S. 25 (1992); *Neitzke v. Williams*, 490 U.S. 319, 324-25 (1989); *Haines v. Kerner*, 404 U.S. 519 (1972); *Nasim v. Warden, Md. House of Corr.*, 64 F.3d 951 (4th Cir. 1995); and *Todd v. Baskerville*, 712 F.2d 70 (4th Cir. 1983). The Magistrate Judge then issued an R&R recommending that this petition be dismissed without prejudice and without requiring

respondents to file a return. (Dkt. No. 31). Petitioner then filed timely objections to the R&R. (Dkt. No. 34).

Legal Standard

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a de novo determination of those portions of the R&R to which specific objection is made. Additionally, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). This Court may also “receive further evidence or recommit the matter to the magistrate judge with instructions.” *Id.*

Discussion

After careful review of the record, the R&R, and Petitioner’s objections, the Court finds the Magistrate Judge accurately applied the law to the facts of this case and therefore adopts the R&R as the order of the Court. In his objections, Petitioner asserts the Magistrate Judge failed to follow *Dorsey v. United States*, 132 S. Ct. 2321 (2012), and apply the provisions of the Fair Sentencing Act of 2010 (“FSA”) to reduce his sentence. In *Dorsey*, the Court held that the FSA applies to offenders whose crimes preceded the effective date of the Act, August 3, 2010, but who were sentenced after that date. *Id.* at 2331. Here, Petitioner was sentenced well before the effective date of the Act. The Magistrate Judge therefore correctly applied the governing law of this Circuit to hold that the FSA was inapplicable to the present case. *See United States v. Belt*, No. 12-8029, 2013 WL 1715577 (4th Cir. Apr. 22, 2013); *United States v. Bullard*, 645 F.3d 237, 248 (4th Cir. 2011).

Conclusion

For the reasons set forth above, the Court agrees with and adopts the R&R of the Magistrate Judge as the order of the Court. (Dkt. No. 31). Accordingly, the Court dismisses this petition without prejudice and without requiring respondents to file a return. (Dkt. No. 1).

AND IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'R. Gergel', is written over a horizontal line.

Richard Mark Gergel
United States District Court Judge

July 23, 2013
Charleston, South Carolina